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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1540

FRANK BERZANSKIS,
Petitioner,

vs.

RICHARD J. DALEY, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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QUESTION PRESENTED FOR REVIEW.

Whether the liquor commissioner, acting under the police power and the statutes of the State of Illinois, properly revoked the retail liquor license of the petitioner, who was in possession of stolen property stored on the licensed premises.

REASONS FOR DENYING THE WRIT.

THE DECISION OF THE SUPREME COURT OF ILLINOIS IS COMPLETELY CONSISTENT WITH BOTH CONSTITUTIONAL PRINCIPLES AND CASE LAW.

There is no more reason to grant certiorari in this case than there was in *Solomon* v. *Liquor Control Commission,* 4 Ohio St. 2d 31, 212 N. E. 2d 595 (1965), in which this Court denied certiorari 384 U. S. 928 (1966). In *Solomon* the Ohio Supreme Court upheld the revocation of a liquor license on a finding that bottles of diluted liquor were discovered during a warrantless search. There, as here, the defendant argued that the evidence was illegally obtained and should be inadmissible under the exclusionary rule of *Mapp* v. *Ohio,* 367 U. S. 643. In the decision which this Court declined to review, the Ohio Supreme Court held that, by applying for and accepting a license to sell intoxicating beverages, the defendant had consented to the provisions of the liquor control statute and warrantless inspection of the premises.

In the case at bar, the Illinois Supreme Court expressly relied on *Solomon* and it was well advised so to do.

The petitioner's suggestion (Petn., p. 7) that the decision of the Supreme Court of Illinois creates a "dangerous exception to the Fourth Amendment exclusionary rule" is unfounded. In fact, the decision merely ratifies the long-existing rule which holds that under facts such as are shown in the present record, license revocation both is proper, and legally justified. There was reasonable basis for revoking the license, and consequently, the revocation was not tinged with arbitrariness. It is noteworthy that in none of the several hearings accorded him, nor in any of his

pleadings, has the petitioner denied that he was in possession of stolen property stored on the licensed premises.

In *Parks* v. *Allen,* 426 F. 2d 610 (5th Cir. 1970), the Court recently stated (at 613):

> "It is firmly established that the state through the 21st Amendment has a broad right to regulate traffic in intoxicating liquors in the valid exercise of its police power. Crowley v. Christensen, 137 U. S. 86, 11 S. Ct. 13, 34, L. Ed. 620 (1890); Joseph E. Seagram & Sons, Inc. v. Hostetler, 384 U. S. 35, 86 S. Ct. 1254 (1966); Hornsby v. Allen, 326 F. 2d 605 (1964). *Moreover, the Fourteenth Amendment admits of the exercise of a wide scope of discretion in this regard. It only prohibits what is done when it is without any reasonable basis and therefore is purely arbitrary,* E. g. Block v. Hirsh, 356 U. S. 135, 41 S. Ct. 458, 65 L. Ed. 865 (1920); Mestre v. City of Atlanta, 255 F. 2d 401 (5th Cir. 1958). Moreover, *the exercise of the power in connection with the liquor industry particularly allows the widest discretion and is subject to minimal demands of the Fourteenth Amendment's due process and equal protection requirements.* See United States v. Frankfort Distillers, 324 U. S. 293 at 299(5), 65 S. Ct. 661, 89 L. Ed. 951 (1945); Atlanta Bowling Center, Inc. v. Allen, 389 F. 2d 713 (5th Cir. 1968); Lewis v. City Grand Rapids, 356 F. 2d 276 (6th Cir. 1966)." (Emphasis added.) See also, Ziffrin v. Reeves, 308 U. S. 132, 84 L. Ed. 128, 138 (1939); Krauss v. Sacremento Inn, 314 F. Supp. 171 (D. C., E. D. Calif., 1970); Martin v. King, 417 F. 2d 458, 462 (Tenth Cir. 1969); Mosher v. Beirne, 357 F. 2d 638, 641 (8th Cir. 1966).

"A city government has wide discretion and broad powers in the control of the liquor traffic. These are subject only to minimal demands of due process and equal protection". (*Barnes* v. *Merritt,* 428 F. 2d 284 (5th Cir. 1970.)

In *Samuels* v. *McCurdy,* 267 U. S. 188, 196 45 S. Ct. 269, 69 L. Ed. 568 (1924), this Court repeated the language from *Mugler* v. *Kansas,* 123 U. S. 623, 31 L. Ed. 205, 8 S. Ct. 273, as follows:

> " 'Indeed, as was said in Stone v. Mississippi, 101 U. S. 814, 816 . . . the supervision of the public health and the public morals is a governmental power, "continuing in its nature," and "to be dealt with as the special exigencies of the moment may require" and that "for this purpose the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself.' "
>
> ". . . For many years, everyone who has made or stored liquor has known that it was a kind of property which, because of its possible vicious uses, might be denied by the state the character and attributes as such, that legislation calculated to suppress its use in the interest of public health and morality was lawful and possible; and this without compensation".

The statutes of Illinois (Ill. Rev. Stat. 1969, ch. 43, par. 112(1)) provide that the local liquor control commissioner (respondent herein) has the power, function and duty "to revoke *for cause* all local licenses issued to persons for premises within his jurisdiction". Federal courts have consistently held that the absolute power to prescribe limitations on the sale of alcoholic beverages is considered a part of a State's administrative process. The discretion exercised in granting or revoking a liquor license is an exercise of ultimate sovereignity commonly referred to as the State's police power, and, as shown in the foregoing decisions, regulation of alcoholic liquor is considered and treated as in a category that might be classified as a "super police power" held by the States and their municipalities. (*Seidenberg* v. *McSorley's Old Ale House, Inc.*, 308 F. Supp. 1253, 1257 (S. D. N. Y., 1969); *Bordenelli* v. *United States*, 233 F. 2d 120, 125 (9th Cir., 1956.)

There is no existent inherent right to engage in the liquor business, and in Illinois the case-law and the statutes specifically provide that a liquor license is purely a personal privilege and does not constitute property. Ill. Rev. Stat.,

Ch. 43, par. 119 (1969); *Day* v. *Illinois Liquor Commission,* 39 Ill. App. 2d 281 (1963). Since the Illinois statute provides that the local liquor commissioner can authorize an inspection of the licensed premises and its books and records at any time *without the need of a search warrant* (Ill. Rev. Stat. 1969, ch. 43, par. 190) it is evident as decided by the Illinois Supreme Court in its well reasoned opinion, that the discovery by the authorities of the stolen items found in the basement of the tavern was sufficient to support the revocation of the license. Of necessity, when the instant petitioner acquired his license, he agreed to the laws and regulations controlling it, and, therefore, waived his right to privacy in the licensed promises. *Zap* v. *United States,* 328 U. S. 624, 628 (1946).

CONCLUSION.

For the foregoing reasons, it is respectfully requested that the Petition For Writ of Certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

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CERTIORARI DENIED N.C.R.